

REMARKS/ARGUMENTS

The present application has been reviewed in light of the Final Office Action dated March 17, 2009. Claims 1-17, 19-22, and 25-32 are currently pending. In view of the remarks and arguments presented herein below, Applicant respectfully submits that the pending claims are allowable over the cited references of record, and accordingly, respectfully requests reconsideration and allowance of the above-identified application.

In the Final Office Action, claims 1 and 3-14 were rejected under 35 U.S.C §103(a) as being unpatentable over U.S. Patent Application No. 2003/0158555 to Sanders et al. (hereinafter "Sanders") in view of U.S. Patent No. 5,868,749 to Reed (hereinafter "Reed"). This rejection is respectfully traversed, as the cited references fail to disclose or suggest all of the features recited in claim 1.

According to § 2143.03 of the MPEP, in order "to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art."

Nowhere does Sanders, either alone or taken in any proper combination with Reed, teach or suggest an absorbable screw including, *inter alia*, a "the head portion having a driver receiving structure formed in an outer radial side surface of the outer diameter, *the driver receiving structure being configured for receiving both a linear and a rotational force,*" (emphasis added). See FIGS. 1 and 4, below.

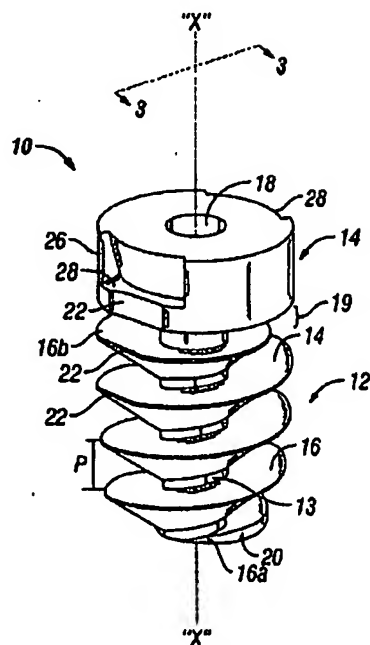


FIG. 1

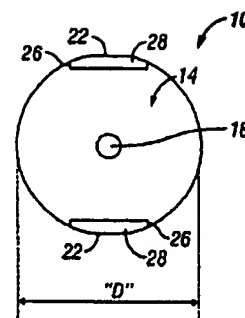
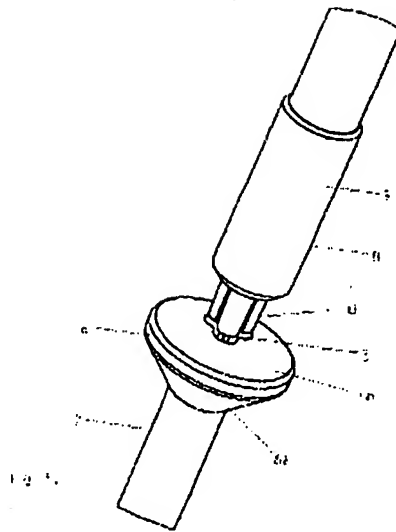


FIG. 4

The Final Office Action states, "Sanders et al. did not teach of a head portion having a driver receiving structure formed in an outer radial side surface of the outer diameter, the driver receiving structure being configured for receiving both a linear and rotational force." As seen in FIG. 5 of Sanders below, the driver receiving structure of Sanders is located in the proximal or rear surface of the screw.

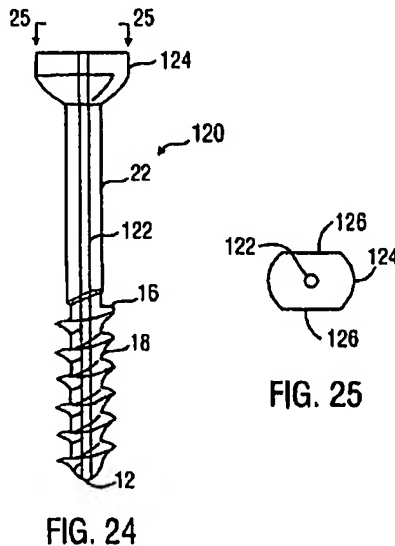


Sanders FIG. 5

Reed fails to remedy the deficiencies of Sanders. The Final Office Action relies on Reed (FIG. 24, 25) to provide "the evidence of the use of a screw having a driver receiving structure formed in an outer radial side surface of the outer diameter, the driver receiving structure being configured for receiving both a linear and a rotational force to provide rotational movement to the device and to facilitate insertion of the device." However, as shown below in FIGS. 24 and 25 of Reed, adding the spherical screw head 124 comprising a cylinder with flat surfaces 126 on at least two opposing sides, (Col. 10, lns. 6-8), of Reed to the screw of Sanders fails to cure the deficiencies of Sanders.

Reed lacks any disclosure or suggestion that, in any proper combination with Sanders, discloses or suggests "*the driver receiving structure being configured for receiving both a linear and a rotational force,*" (emphasis added), as recited in claim 1 of the present application. While

flat surfaces 126 may be capable of receiving rotational forces, flat surfaces 126 are incapable of receiving a linear force as any linear forces would simply slide off of flat surfaces 126 or slide axially relative to flat surfaces 126 and not be received thereon.



In view of the foregoing remarks and arguments, Applicant respectfully submits that the structure described in independent claim 1 is not taught, disclosed, or contemplated by Sanders, Reed, or the prior art references of record. Accordingly, Applicant respectfully submits that independent claim 1 is allowable over the references of record, and accordingly, respectfully requests reconsideration and allowance of independent claim 1.

Since claims 3-14 depend, directly or indirectly, from claim 1 and contain all the features of claim 1, it is respectfully submitted that claims 3-14 are also patentable under 35 U.S.C. §102(e) over Sanders.

Applicant fails to see in Reed where the limitation of "*the driver receiving structure being configured for receiving both a linear and a rotational force,*" is shown or disclosed. Accordingly, Applicant respectfully invites the Examiner to specifically point out an example of the limitation of "*the driver receiving structure being configured for receiving both a linear and a rotational force,*" is shown or disclosed.

Claim 2 was rejected under 35 U.S.C §103(a) as being unpatentable over Sanders in view of Reed in view of U.S. Patent No. 6,096,060 to Fitts et al. (hereinafter "Fitts"). Applicant respectfully submits that dependent claim 2 is allowable over Sanders in view of Reed since claim 2 depends directly from claim 1 and contains all the limitations of claim 1, and for the reasons presented above for the patentability of claim 1.

In view of the remarks and arguments presented above, Applicant respectfully submits that the rejection of claim 2 has been overcome because neither Sanders, Reed, nor Fitts, considered individually or in combination, disclose or suggest the present invention, as claimed.

Claims 15-17, 19-22, and 25-32 were rejected under 35 U.S.C §103(a) as being unpatentable over Sanders in view of Reed in view of U.S. Patent No. 2,248,054 to Becker (hereinafter "Becker"). This rejection is respectfully traversed, as the cited references fail to teach or suggest all of the features recited in either of independent claim 15 or 22.

Nowhere does Sanders, either alone or taken in any proper combination with Reed and/or Becker, disclose or suggest an instrument comprising, *inter alia*, at least a pair of resilient force transmitting arms that are "configured to provide at least a *partial passage for a fastener*

therethrough,” (emphasis added), as recited in claim 15, or “wherein the resilient force transmitting arms allow at least a *partial passage for the fastener therethrough,*” (emphasis added), as recited in claim 22. As illustrated in FIG. 9, below, fastener applier 100 includes a pair of resilient force transmitting arms 144a.

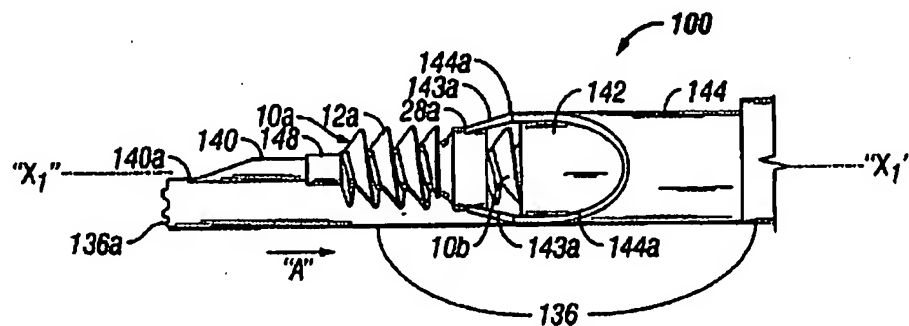
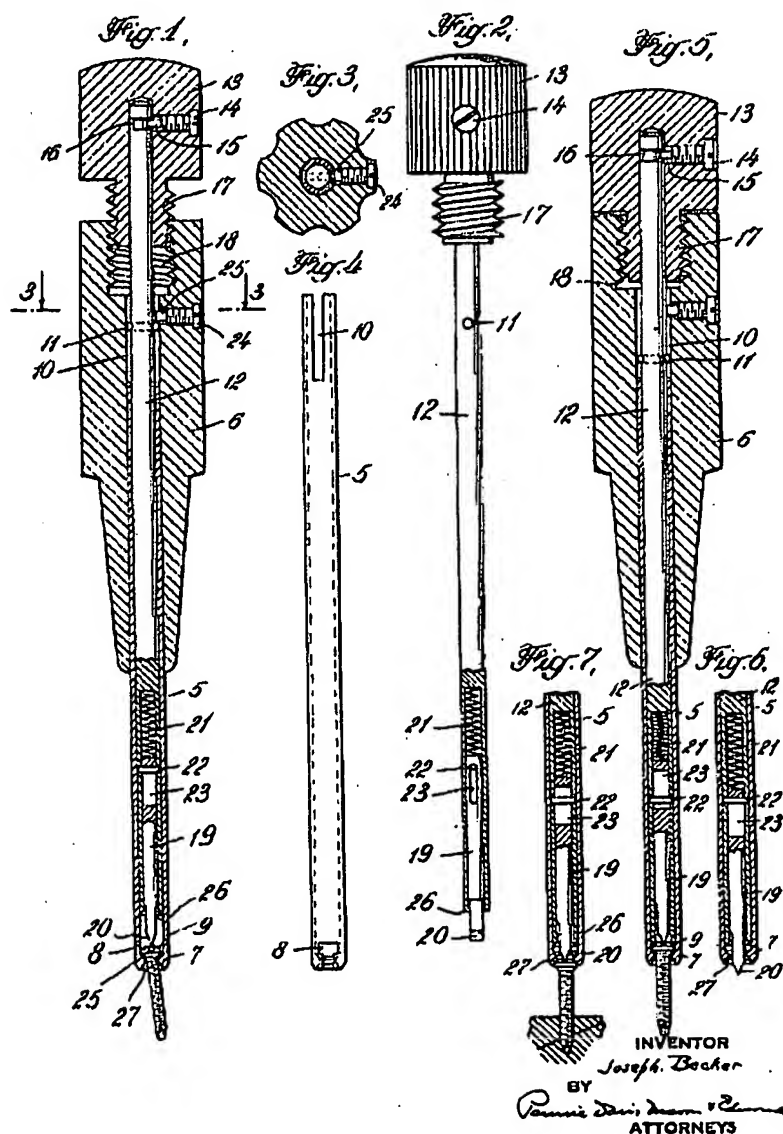


FIG. 9

The Final Office Action states, “Sanders et al and Reed disclose all the limitation, such as an absorbable screw and a method of transmitting both the *axial* and rotational force to the absorbable screw,” (emphasis added). However, as discussed above in regard to claim 1, neither Sanders nor Reed teach, disclose, or contemplate the absorbable screw or method of transmitting both the axial and rotational force to the absorbable screw, as recited in either claim 15 or claim 22.

Further, the Final Office Action states “that the above combination of references [Sander and Reed] did not teach of an instrument for inserting the absorbable screw.” The Final Office Action relies on Becker to provide “evidence of the use of such an instrument whereby the screw may be driven in bone structure without danger of slipping or misdirecting the screw.”

Becker discloses, as shown below in FIGS. 1-7, a screw driver including a shank 5 having a pair of rigid or immovable claws 7 with a lateral opening 8 through which the head 9 of the screw may be inserted and in which the screw is loosely held, (Col. 1, ln. 52 – Col. 2, ln. 2).



Therefore, Becker lacks any disclosure or suggestion that, in any proper combination with Sanders and/or Reed, discloses or suggests *at least a pair resilient force transmitting arms* that provide or allow “*a partial passage for the fastener therethrough*,” (emphasis added), as recited in claims 15 and 22 of the present application.

In view of the foregoing remarks and arguments, Applicant respectfully submits that the structure described in independent claims 15 and 22 are not taught, disclosed, or contemplated by Sanders, Reed, Becker, or the prior art references of record. Accordingly, Applicant respectfully submits that independent claims 15 and 22 are allowable over the references of record, and accordingly, respectfully requests reconsideration and allowance of the above identified application.

Since claims 16-17, and 19-21 depend, directly or indirectly, from claim 15, and contain all of the features of claim 15, for the reasons presented above regarding the patentability of claim 15, Applicant respectfully submits that claims 16-17 and 19-21 are also patentable under 35 U.S.C §103(a) as being unpatentable over Sanders in view of Reed in view of Becker.

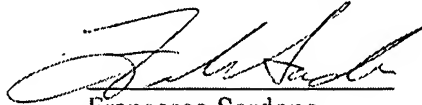
Since claims 25-32 depend, directly or indirectly, from claim 22, and contain all of the features of claim 22, for the reasons presented above regarding the patentability of claim 22, Applicant respectfully submits that claims 25-32 are also patentable under 35 U.S.C §103(a) as being unpatentable over Sanders in view of Reed in view of Becker.

Application Serial No. 10/560,879
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Reply to Final Office Action mailed March 17, 2009
Docket: 2909 US (203-3757 PCT US)

Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the number indicated below.

An early and favorable response on the merits is earnestly solicited.

Respectfully submitted,



Francesco Sardone
Reg. No. 47,918
Attorney for Applicant(s)

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 420
Melville, New York 11747
Tel.: (631) 501-5700
Fax: (631) 501-3526
FS/nr